

Michael J. SHEA
Serial No. 09/541,986
Response to Office Action dated June 10, 2005

Remarks

Reconsideration and allowance of the subject patent application are respectfully requested.

Non-elected claims 48, 57, 63, 75, 79, 84 and 87 have been canceled without prejudice or disclaimer. Applicant reserves the right to file a divisional application directed to the subject matter of these non-elected claims.

The pending claims were rejected over Macri et al. (U.S. Patent No. 5,890,906), taken either alone or in combination with Lubell et al. (U.S. Patent No. 4,566,461). Applicant respectfully requests that these rejections be withdrawn because, among other things, portions of Macri et al. relied upon in the office action do not constitute prior art to the subject patent application.

Macri et al. was filed after the priority date to which the subject patent application is entitled. Macri et al. is a continuation-in-part of a PCT application PCT/US/00919 (filed January 22, 1996 and published as WO 96/22314 (copy attached) on July 25, 1996) and is a continuation-in-part of abandoned application no. 375,616, filed January 20, 1995. Because the PCT application was filed and published after the priority date to which the subject patent application is entitled, only those portions of Macri et al. which are contained in the '616 application could potentially constitute prior art to the subject patent application.

The office action makes reference to col. 3, lines 17-30 of the Macri et al. patent in connection with using the internet and contacting a remote computer from an exercise apparatus in response to an input to the exercise apparatus. Applicant has reviewed the '616 application

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(copy attached) to determine whether the col. 3, line 17-30 disclosure is contained therein and finds no such corresponding disclosure in the '616 application papers. Consequently, Applicant respectfully submits that this col. 3, lines 17-30 disclosure is not entitled to the January 20, 1995 filing date of the '616 application.

Because, for example, the col. 3, lines 17-30 disclosure of the Macri et al. '906 patent is not entitled to the January 20, 1995 filing date of the '616 application, at least this portion of the Macri et al. '906 patent is not prior art to the subject patent application. Consequently, withdrawal of the rejections based on Macri et al. taken either alone or in combination with Lubell et al. is respectfully requested.

For the Examiner's convenient reference, patents that issued based on application nos. 375,606 and 375,617 listed in the published Macri et al. PCT application are identified on the attached PTO-1449 form, along with the published Macri et al. PCT application and the '616 application.

Applicant emphasizes that the arguments presented above noting that at least portions of Macri et al. are not prior art do not constitute (and should not in any way be construed to constitute) an admission that these portions of Macri et al. anticipate or make obvious the pending claims, taken alone or in combination with Lubell et al.

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Applicant submits that the pending claims are in condition for allowance, and action to that end is earnestly solicited.

Respectfully submitted,

By: 

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